

REMARKS

Claims 1-8, 11-18 and 21-27 are pending in this application. By this Amendment, claims 1, 4, 6, 7, 11-15, 17, 18, 21-25 and 27 are amended and claims 9, 10, 19 and 20 are cancelled without prejudice or disclaimer. Claims 1, 12 and 21 are the independent claims. No new matter is added.

I. Information Disclosure Statement:

Applicants respectfully request acknowledgment of receipt and consideration of the references submitted in the Information Disclosure Statement filed on October 19, 2005.

II. Premature Final Rejection:

Applicants respectfully request withdrawal of the Final Rejection of the present application for being premature as the Applicants have yet to receive a first Office Action on the merits and because the Examiner has failed to show that the subject matter of the present application is either anticipated or obvious. Under U.S. Federal law, a person shall be entitled to a patent unless, the invention is anticipated or rendered obvious by prior art (35 U.S.C. §§ 102, 103).

Further, under MPEP § 904, “in the first action on the merits of an application, the Examiner must complete the image file wrapper (IFW) search notes form in the Office Action correspondent subsystem to include the classes and subclasses of the domestic and foreign patents, abstract collections, and publication in which the search for prior art was made” (emphasis added). As the IFW search notes have not been completed, as is evidenced by the IFW available on the USPTO PAIR website, and because the Examiner has yet to assert a single prior art reference to reject the claims of the present application under 35 U.S.C. § 102 or § 103, Applicants have not yet received an Office Action on the merits which would warrant a final rejection of the present application. Accordingly, Applicants respectfully request withdrawal of the final rejection of this application and consideration on the merits.

III. Rejections under 35 U.S.C. § 112

Claims 1-21 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. As claims 9, 10, 19 and 20 are cancelled the rejection of those claims is moot. Applicants respectfully traverse the rejection of the remaining pending claims for the reasons detailed below.

It is alleged in the Office Action that the Applicants have failed to describe the claimed subject matter in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Specifically, it is alleged that the Applicants have failed to disclose that there is no first detector and second detector disclosed in the specification.

Although Applicants respectfully disagree with the Examiner's assertion, in an effort to expedite prosecution of the present application, the rejected claims are amended to recite an encoding apparatus being operative to "read a first detector line corresponding to a row in the pixel matrix corresponding to the imaged pattern of the first code track and read a second detector line corresponding to a row in the pixel matrix comprising the imaged pattern of the second code track." Figure 4 of the present application clearly shows a first detector line 410 corresponds to a pixel matrix of the first code track 210 and another line 420 corresponds to a second code track 220. Thus, the claim features are clearly shown and described throughout the specification of the present application. Accordingly, withdrawal of the rejection of the claims under 35 U.S.C. § 112, first paragraph is respectfully requested.

Claims 1-27 are rejected under 35 U.S.C. § 112, second paragraph. As claims 9, 10, 19 and 20 are cancelled, the rejection of those claims is moot. Applicants respectfully traverse the rejection of the remaining pending claims.

It is alleged in the Office Action that the rejected claims are indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Specific claim language in claims 1, 9, 10, 19 and 24 is pointed out for allegedly failing to have proper antecedent basis. As claims 9, 10 and 19 are

cancelled the rejection of those claims for lacking antecedent basis is moot. Moreover, claims 1 and 24 are amended to no longer lack antecedent basis.

Additional features in claim 1, 12 and 21 are pointed out for allegedly being "unclear." As these claims are also amended in response to the rejection, withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John A. Castellano, at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,
HARNES, DICKEY, & PIERCE, P.L.C.

By _____

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